

Louisiana State Board of Examiners of Psychologists
MINUTES: SPECIAL MEETING
Wednesday, September 7, 2016

Final Approved: September 23, 2016

A special meeting of the Louisiana State Board of Examiners of Psychologists (Board) was noticed and agenda posted on, Monday, September 5, 2016. Dr. Burnett, Chair, called the meeting to order at 8:30 a.m. on Wednesday, September 7, 2016 at 8706 Jefferson Highway, Suite B, Baton Rouge, LA 70809. Present were Board Members, Darla Burnett, Koren Boggs, and Jesse Lambert; Executive Director, Jaime T. Monic; Attorney Amy Groves Lowe; Cindy Bishop, LPA Executive Director; Earl Willis, LPA and Caleb Kersten, LPA Intern. Absent was Dr. Marc Zimmermann.

Dr. Burnett opened the meeting by reading the Board’s Declaration of Purpose.

Dr. Boggs moved to approve the agenda for the day. The motion passed by unanimous roll call vote as follows: Burnett - YEA, Boggs- YEA, Lambert – YEA

Dr. Burnett reported on the first meeting of the Task Force for Meaningful Oversight: Senate Concurrent Resolution 65 (2016 Regular Session) held on August 29, 2016. She reported that she and Ms. Monic attended the meeting. Dr. Burnett summarized that the first meeting was primarily spent discussing board composition. The mediators of the taskforce had set a goal to provide recommendations in accordance with SCR 65, within 3-4 meetings.

The Board reviewed and discussed the list of questions posed by Taskforce mediators Stephen Russo, Chair, and Attorney Angelique Duhon Freil, Deputy Director Civil Division, Louisiana Department of Justice, Office of the Attorney General; and received advice on each from its General Counsel, Ms. Lowe. The Board approved the following information as its authority, policy and position on the questions presented by the Taskforce:

Q.	A.
Board name	The Louisiana State Board of Examiners of Psychologists
Source of funding	100% Self-generated, not deposited into the state general fund.
Composition of the board	5 members, psychologists
Method of selection of board members	Board holds an election, the results of the election are submitted to the governor’s office by the LA Psychological Association for appointment by the Governor.
Length of board member terms and term limits	5 years

<p>Mechanism, if any, for removal of board members</p>	<p>If the behavior of a board member was found to be unlawful or unethical, the Board would notify either the Inspector General, Attorney General, Board of Ethics and/or Governor’s Office (Boards and Commissions). However, there is no mechanism for “removal” that is specifically written in the psychology statute.</p> <p>Members are vetted in accordance with La. R.S. 2353 and appointed by the Governor. A member must be confirmed by the senate and will generally serve for one year preceding confirmation. Members have been removed as a result of non-confirmation.</p>
<p>What licenses are issued by the board</p>	<ul style="list-style-type: none"> a. Licensed Psychologist; b. Provisional Licensed Psychologist; c. Temporary Practice (Psychology); d. Licensed Specialist in School Psychology
<p>In addition to licenses, are there any other certificates or registrations granted by the board;</p>	<p>No other certificate or registration is currently granted by the board.</p>
<p>Does the board issue cease and desist letters, and what is the authority, process, and the due process procedures</p>	<p>Under the authority referenced below, the board does investigate complaints against unlicensed individuals. The Board issues a “Letter of Notification” to the unlicensed individual which explains the allegations; educates them as to the practice act for psychologists; requests their compliance acknowledged in writing or evidence that they are indeed lawfully authorized to continue the practice; and, informs them that the continued unauthorized practice of psychology will trigger our obligation and authority to both report the matter to the District Attorney and seek an injunction within the court.</p> <p>Statutory Authority:</p> <p>§2351. Declaration of purpose. It is hereby declared that the creation of a State Board of Examiners of Psychologists is necessary in order to safeguard life, health, property and the public welfare of this state, and in order to protect the people of this state against unauthorized, unqualified, and improper application of psychology.</p>

§2353. State board of examiners; organization; duties; meetings; fees

...(6) Cause the prosecution and enjoinder of all persons violating this Chapter, and incur necessary expenses therefor.

§2360. Violation and penalties

A. It shall be a misdemeanor: (1) For any person **not licensed** under this Chapter or Part VI of Chapter 15 of this Title to represent himself as a psychologist; or (2) For any person **not licensed** under this Chapter or Part VI of Chapter 15 of this Title to engage in the practice of psychology; or (3) Except for medical psychologists duly licensed by the Louisiana State Board of Medical Examiners, for any person to represent himself as a psychologist during the time that his license as a psychologist shall be suspended or revoked or lapsed; (4) For any person to otherwise violate the provisions of this Chapter.

B. Such misdemeanor shall be prosecuted by the district attorney of the judicial district in which the offense was committed in the name of the people of the state of Louisiana. C. Such misdemeanor shall be punishable upon conviction by imprisonment for not more than six months, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Each violation shall be deemed a separate offense.

§2361. Injunctive proceedings

A. The board may investigate any evidence or allegation which appears to show that any person is or may be in violation of any provision of this Chapter.

B. The board may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act which is in violation of this Chapter.

C. If it be established that the defendant has been or is committing an act which is in violation of this Chapter, the court shall enter a decree perpetually enjoining said defendant from further committing such act.

	D. In case of violation of any injunction issued under the provisions of this Section, the court may summarily try and punish the offender for contempt of court. E. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies as provided in this Chapter.
Does the board have the authority to issue injunctions and what is the authority, the process, and the due process procedures;	The Board may seek an injunction through any court of competent jurisdiction to enjoin someone from violating the provisions of the psychology practice act. This is a costly endeavor that the Board does not pursue lightly. The Board may not independently order an injunction.
What is the process for disciplinary actions, what is the authority, the process and the due process procedures;	Regulations (LAC Title 46, Part LXIII. Ch. 15) and Procedures (LSBEP PPM 7000) are attached.
Is there a mechanism for emergency action by the board, what is the authority and the due process procedures;	The Board may engage in Emergency Rule Making within the limits of the Psychology Practice Act with oversight from the House of Representatives and Senate and their respective Health and Welfare Committees; the Board may issue a Summary Suspension of a licensee in accordance with the Administrative Procedures Act. There is no mechanism for emergency action by the board of a non-licensee.
Is there any additional oversight for the rulemaking process;	Oversight for Rulemaking occurs at several levels as follows: <ul style="list-style-type: none"> a. Discussion and opportunity for public comment at Board Meetings prior to filing rules; b. Publication of proposed rules on the Board’s website and also in the LA Register; c. Scheduled hearings or opportunity for public comment or to request hearing on proposed rules; d. Review by the Legislative Fiscal Office which specifically includes review on the following: <ul style="list-style-type: none"> 1) ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS <ul style="list-style-type: none"> a) What persons or non-governmental groups would be directly

	<p>affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.</p> <p>b) an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.</p> <p>2) ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT</p> <p>a) Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.</p> <p>e. Review by the LA Register</p> <p>f. Review by the Senate and House of Representatives and their respective Health and Welfare Committees; in the form of an initial report that the rule is being filed and a second report that includes:</p> <p>(1) A response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions.</p> <p>(2) In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions.</p>
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<p>What type of training do the board members receive once they are appointed to the board;</p>	<ol style="list-style-type: none"> 1) LSBEP has a Board Member Orientation packet which contains Policy, Procedures, Statutes, Rules, Administrative Procedures Act, Open Meeting Laws, Keesey's Parliamentary Procedures; 2) Board members are required to annually take online ethics training; 3) New Board Members attend a national association meeting (ASPPB) where they attend a New Board Member Orientation; 4) The Board is a member of the Federation of Associations of Regulatory Boards (FARB) which provides training on regulatory issues to Members. In 2014, LA Board's organized a FARB training for Members and Administration.
<p>Is there currently any training done to educate members on how to recognize actual antitrust issues;</p>	<p>The Board is a member of FARB and has organized training at its own expense to educate its membership on antitrust issues. The Board has also begun implementation of a new policy for antitrust training to be conducted annually by the Board's General Counsel at its Long Range Planning meeting.</p>
<p>What areas of training would the board members like to receive;</p>	<p>Any additional training offered by the state agencies that oversee open meetings laws, ethics; understanding the regulatory role versus professional advocacy, would be a welcomed opportunity. Additionally, if changes to board statutes are implemented as a result of the recommendations from the Taskforce on Meaningful Oversight (SCR65), (i.e. board composition, antitrust issues, role of ex-officio/public members) training and policy recommendations would be crucial.</p>
<p>What is the board's position on including more non-market participants as members on the board;</p>	<p>Although the Board would not be opposed to adding ex-officio members serving in an advisory capacity, there is a concern that the addition of any non-market participants on the board would reduce or eliminate altogether the judicial deference afforded to licensing boards by the courts. Currently, the courts defer to licensing boards on substantive issues within their purview of practice. Courts will not substitute their understanding of issues regarding a particular profession for that of the board who has expertise in that practice area. Adding non-market participants to a licensing board would eliminate the ability of a court to defer to the board on practice</p>

	issues.
<p>How would changes to board composition affect board efficiency;</p>	<p>Non-market members (public members) would not be able to contribute to the majority of decisions of the board due to lack of professional knowledge. Examples would include review of an individual’s training credentials for licensure; scope of practice; administering oral examinations (the board administers a case vignette and assesses an applicant’s ability to identify and diagnose mental health issues); review training programs; review complaints that most often call into question practice issues rather than matters that would involve purely administrative reviews and which reviews require suggesting and approving adequate remediation (training and/or education) in order to resume the practice of psychology in a manner that protects the health, safety and well-being of the public. In addition, non-market participants would not have the same understanding of the statutes and rules governing the practice as market participants.</p> <p>Finally, as stated above, the inclusion of non-market participants would jeopardize or potentially eliminate any judicial deference by the courts issues related to the practice of psychology.</p>
<p>What is the board’s position on needed changes in light of the North Carolina Dental case: does the board think it is applicable, what are the board’s concerns, and proposed remedies;</p>	<p>The North Carolina Dental case has caused the Board to scrutinize its statutes, regulations, policies and procedures concerning antitrust issues. This review has facilitated the implementation of better defined procedures for handling complaints against non-market participants (including the adoption of the FARB Model for Identifying and Addressing Antitrust Issues); and implementation of an annual antitrust training for members. However, beyond this, it is the Board’s position that the statutes and regulations are clear regarding the scope and limitations of the board to regulate the practice of psychology. This is supported in a speech given by Maureen K. Ohlhausen, Commissioner, U.S. Federal Trade Commission and presented to the Heritage Foundation on March 31, 2015 in Washington, DC following the Supreme Court’s North Carolina Dental Decision and the FTC’s Campaign to Rein in State Action Immunity. Wherein, she states,</p> <p style="text-align: center;">“It is worth considering that, in a real sense, the <i>North Carolina Dental case</i> did not have to happen. The</p>

	<p>Board could have proceeded against the non-dentist teeth whiteners by seeking injunctions from the North Carolina courts, rather than issuing cease-and-desist letters directly to those parties. If the Board had chosen that path, it would have been shielded from antitrust liability under the <i>Noerr-Pennington</i> doctrine. Alternatively, the Board could have promulgated a rule defining the practice of dentistry to include teeth whitening. Under North Carolina law, that rule would have been subject to review and approval by the Rules Review Commission [<i>House and Senate Health and Welfare Committees</i>], which could very well have constituted sufficient supervision under the state action doctrine. Thus, the Board was subject to antitrust scrutiny because it opted to bypass its statutorily provided powers in favor of coercive measures that were not authorized under state law.”</p> <p>It is the Board’s position that there is no need for any changes to our current board structure in Louisiana. Our Board operates pursuant to the statutes and rules reviewed and promulgated by our state legislature and within its statutory power. As such, there is no need to change the structure of our board.</p>
<p>Does the board take the position that there is currently a state supervisor who reviews decisions of the Board; if so, describe and explain whether that person has the power to reverse or modify the board’s decision;</p>	<p>It is the Board’s position that, regarding market participants, there is oversight through rule-making, and adjudication of a complaint.</p> <p>In Rulemaking, this oversight occurs at several levels as follows:</p> <ol style="list-style-type: none"> a. Discussion and opportunity for public comment at Board Meetings prior to filing rules; b. Publication of proposed rules on the Board’s website and also in the LA Register; c. Scheduled hearings or opportunity for public comment or to request hearing on proposed rules; d. Review by the Legislative Fiscal Office which

specifically includes review on the following:

3) ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- a) What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.
- b) an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

4) ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT

- a) Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

e. Review by the **LA Register**

f. Review by the **Senate and House of Representatives and their respective Health and Welfare Committees**; in the form of an initial report that the rule is being filed and a second report that includes:

- (1) A response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions.

In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions.

In complaint adjudication, a complainant is ultimately the Board's witness against a licensee. The parties in an Administrative Complaint include the Board and the Licensee. In decisions which are adverse to the licensee, this Board is required to follow the LA Administrative Procedures Act and offer an opportunity for hearing. In these cases, an administrative law judge oversees the decisions of

	<p>the board. An opportunity to appeal these decisions are afforded under La. R.S. §2353. E.</p> <p>“Any person aggrieved by an action of the board may seek judicial review in the district court for the parish of East Baton Rouge in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.”</p> <p>Regarding Non-market participants, oversight occurs at the district court level as stated under §2361,</p> <p>“...the board may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act which is in violation of the Psychology Act...the court shall enter a decree perpetually enjoining said defendant from further committing such act... in case of violation of any injunction issued under the provisions of this Section, the court may summarily try and punish the offender for contempt of court.”</p>
<p>Suggestions for active supervision by the state on market-sensitive decisions;</p>	<p>It is the Board’s opinion that the board’s policies and training in conjunction with oversight currently in place (i.e. rule-making and injunctive preceding’s in the District Courts) is sufficient.</p>

<p>Position on creation of a superagency that would review market-sensitive decisions and would approve, modify or veto the board’s action;</p>	<p>The Board maintains that adequate oversight currently exists in market-sensitive decisions involving non-market participants (i.e. the District Attorney; Judicial District Courts; LaRegister; Legislative Fiscal Office; Health and Welfare Oversight Committees).</p> <p>According to the Fourth Circuit Court of Appeal of Louisiana (Teri DYER v. The LOUISIANA STATE BOARD OF DENTISTRY. No. 99-CA-2706. May 17, 2000.) which found that “...all disciplinary powers over non-licensees for the unlawful practice [of dentistry] is reserved for the district courts according to LSA-Const. Art. 5, § 16...”</p> <p>It would be unconstitutional for the board to otherwise impose a fine, sentencing or other order of declaratory judgment against a non-licensee. However, it may investigate and seek such relief from the appropriate district court.</p>
<p>Position on periodic sunset review of the board by the legislature;</p>	<p>It is the Board’s position that periodic review of an agency is another method of oversight.</p>
<p>Is there a concern with participation by board members that wear a dual hat/association appointee, etc.;</p>	<p>Participating as an officer in an Association could present a conflict of interest where the Association protects the interests of the market participant and the Board protects the interests of the consumer. There may be ethical and/or legal considerations in dual office holding in some cases. The Board must rely on the Governor’s Office of Boards and Commissions to review and vet these matters and potential conflicts of interest. This Board is not currently dealing with such concerns. Additionally, the Board seeks to improve relations with its association to seek and support the Board’s opinion on legislation that may promote the profession, but potentially harm the public.</p>
<p>Are there specific board prohibitions that address conflicts of interests that may exist for board members;</p>	<p>The Board has no prohibition specifically written in its regulations. However, it is the Board’s policy to follow the Open Meetings and Ethics laws.</p> <p>The following are the statutory requirements/prohibitions for service</p>

on this board:

§2353. State board of examiners; organization; duties; meetings; fees

A.(1) There is hereby created within the Department of Health and Hospitals a Louisiana State Board of Examiners of Psychologists which shall be subject to the provisions of R.S. 36:803. The board shall consist of five members who are citizens of the United States, residents of the state of Louisiana, and appointed by the governor.

(2) Upon expiration of the three-year terms of the members in office on September 1, 1987, and except for the transition set forth below, the governor shall appoint members for terms of five years. For the two vacancies occurring July 1, 1988, one member shall be appointed for a three-year term and one member for a four-year term; for the vacancy occurring July 1, 1989, the member shall be appointed for a four-year term; and for the two vacancies occurring July 1, 1990, one member shall be appointed for a four-year term and one member for a five-year term. A board member shall not be eligible to succeed himself. All appointments shall be from a list provided by the Louisiana Psychological Association. The list shall report the results of an election in which persons qualified for board membership may nominate themselves and in which licensed members of the Louisiana Psychological Association and other persons licensed under this Chapter are entitled to one vote for each vacancy on the board.

(3) Each board member shall have rendered service, teaching, training, or research in psychology for at least five years, shall have held a doctoral degree in psychology from a school or college as defined in this Chapter for a period of five years, and shall be licensed under this Chapter for a minimum of five years.

(4) Notwithstanding the provisions of this Subsection, no person shall be eligible to serve as a board member if he is employed by the board, has a contract with the board for services, or within the preceding twelve months of his nomination was employed by the board or had a contract with the board for services.

(5) Board members shall serve without compensation but shall receive seventy-five dollars per diem allowance plus the mileage rate provided state employees to cover expenses incurred while engaged in the discharge of their duties.

(6) Membership on the board of a public employee or official shall not constitute dual office holding within the meaning of R.S. 42:61 et seq.

(7) Each appointment by the governor shall be submitted to the Senate for confirmation.

<p>Is there any need for improvements in enabling statutes to provide more guided direction in order for the board to make decisions affecting the professional markets;</p>	<p>It is the Board’s opinion that the statutes under which the board regulates the practice of psychology are clear and do not need improvement. The Board operates within our statutes. However, any suggested guidelines or policies from the Department of Health that better clarify our role as a regulatory body would be welcomed.</p>
<p>Any need for improvement in immunity statutes.</p>	<p>It is the Board’s opinion that the immunity statutes are adequate. The board has the following immunity statutes, and these have not been challenged:</p> <p>§2364. Protected action and communication</p> <p>There shall be no liability on the part of and no action for damages against:</p> <p>(1) Any member of the board, its agents, or employees, or any member of a committee appointed or designated by the board, for any action undertaken or performed by such person within the scope of the duties, powers, and functions of the board or such committee when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.</p> <p>(2) Any person providing information to the board, its agents, or employees, or to a committee appointed or designated by the board, without malice and in the reasonable belief that such information is accurate.</p>

Dr. Lambert moved to enter into executive session pursuant to LSA R.S.42:6.1, to review applicant credentials for Complaints Coordinator II contract. The motion passed by unanimous roll call vote as follows: Burnett - YEA, Boggs- YEA, Lambert - YEA

Dr. Lambert moved to close executive session. The motion passed unanimously. The following was resolved:

WHEREAS, the Louisiana State Board of Examiners of Psychologists [LSBEP] is authorized to investigate complaints and take action to protect the public against psychologists in violation of the ethical standards of psychologists and laws and rules of this Board; and

WHEREAS, the LSBEP requires the specialized services of a licensed psychologist qualified to review and coordinate requests for investigation, coordinate and negotiate consent orders for the Board and oversee the timeliness of investigations assigned to LSBEP complaints investigators; and

WHEREAS, the role of the Complaints Coordinator is more involved than in previous years as it is required to utilize a licensed private investigator to investigate complaints and who does not have the clinical knowledge of a licensed psychologist; and

WHEREAS, the LSBEP has a backlog of complaints; and
WHEREAS, the Complaints Coordinator may need to recuse themselves from an investigation due to a conflict of interest;
THEREFORE, at its meeting on September 7, 2016 the LSBEP approved a contract for Complaints Coordinator II; and
RESOLVED, that the LSBEP offer the contract for Complaints Coordinator II to **Sasha J. Lambert, Ph.D.**, licensed psychologist, for the remainder of the 2016-17 Fiscal Year, at the following rates of pay, and not to exceed a maximum of \$12,000 for that period.

\$100 per hour, payable upon completion of a review of a Request for Investigation, with a preliminary and final recommendation to the LSBEP, such review shall not exceed \$200 per case.

\$100 per hour, payable upon completion of a review/proof of an Administrative Complaint pleading, not to exceed \$100.

\$100 per hour for all meetings, including training and meetings with attorneys, investigator, executive director, board, and preliminary hearings.

Dr. Boggs moved to adjourn the meeting at 11:15 am. The motion passed unanimously.